REMARKS/ARGUMENTS

Claims 1-13 and 15-17 are pending in the instant application and have been again rejected. Applicants traverse this rejection. Applicants respectfully request reconsideration and allowance of this application in view of the following comments.

Claim Rejections – 35 U.S.C. § 102

Claims 1-4, 6-13 and 15-17 are again rejected under 35 U.S.C. § 102(e) as being anticipated by Beattie et al. (US 6,268,147). Applicants respectfully traverse this rejection.

MPEP 2131 provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicants respectfully submit that Beattie et al. clearly does not include each and every limitation of the claims of the present invention. Furthermore, Beattie et al. fails to disclose, teach or suggest the present invention. Beattie et al. describes a method for nucleic acid analysis using tandem hybridization on color-coded microspheres and flow

cytometric detection (Example 18, columns 38–40, Figure 15A and 15B). The method of Beattie et al. requires hybridization of three molecules, (a) a labeled stacking probe, (b) a probe on the bead, and (c) a nucleic acid to be analyzed. The labeled stacking probe hybridizes in tandem with the probe on the bead to the nucleic acid molecules being analyzed. The hybridization product is then analyzed by flow cytometry (Figure 15A and 15B).

Beattie et al. fails to disclose a method comprising the step of "providing the nucleic acids from two sources as labeled probes" (claim 1 of the instant application). Beattie et al. instead relies on the label on a labeled stacking probe, for the detection of a source nucleic acid. The current invention is therefore clearly distinct from Beattie et al. In addition, Applicants direct the Examiner's attention to Figures 2, 3 and 4 of the instant application, as well as to Applicants' description that "mRNAs or cDNAs prepared from control and test cells or tissues are labeled with fluorescent tags to identify their source" (page 4, lines 20-21). It is clear that Beattie et al. does not teach a method comprising the step of "providing the nucleic acids from two sources as labeled probes" (claim 1 of the instant application). For this reason the rejection is improper and should be withdrawn.

Claim Rejections – 35 U.S.C. § 103

The remaining issue is whether Applicants' claim 5 is rendered obvious over Beattie et al. in view of Cocuzza et al. (US 5,484,701), and thus are not allowable under 35 U.S.C. § 103.

Applicants believe that the asserted references do not render obvious the Applicants' claim. As stated above, there is a fundamental difference between the current invention and that of Beattie et al. As such, even if the references are combined, this combination does not render obvious Applicants' claim 5.

In view of the amendments and remarks hereinabove, Applicants respectfully submit that claims 1-13 and 15-17 of the present application are in condition for allowance.

Early and favorable action thereon is respectfully requested.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on April 4, 2005.

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